HONOURABLE MRS. JUSTICE T.MEENA KUMARI

&

HONOURABLE MR JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No:27426 OF 2007

Dated:20.12.2007

Between:

M/s. Mahindra & Mahindra Ltd.,
(Transport Solutions Group)
"Mahindra House",H.No.1-7-1, Park Lane,
TSR complex,Secunderabad, rep., by its
Senior General Manager-Corporate Sales
Tax Shrikant Madhukar Kulkarni.

..Petitioner

And

1. Assistant Commissioner (CT) LTU,
   Begumpet Division, Hyderabad and another.

..Respondents.

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HONOURABLE MRS. JUSTICE T.MEENA KUMARI
&
HONOURABLE MR JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No:27426 OF 2007

ORDER: (Per Hon'ble Smt. Justice T. Meena Kumari)

The present writ petition is filed by the petitioner seeking to declare the action of the 2nd respondent in rejecting the stay application by proceedings dated 14.12.2007 for the assessment year 2005-2006 as arbitrary and contrary to the provisions of APVAT Act and consequently to grant stay of collection of the disputed penalty for the assessment year 2005-2006, pending disposal of the appeal before the 2nd respondent.

The main grievance of the petitioner is that against the penalty proceedings issued by the 1st respondent, an appeal has been preferred before the 2nd respondent. Along with the said appeal, an application for stay of collection of the disputed penalty was moved, but the same was rejected. On apprehension that in pursuance of the rejection of stay, 1st respondent may take coercive steps by issuing garnishee notice, the petitioner preferred the present writ petition.

Heard the learned Counsel appearing for the petitioner and the learned Special Standing Counsel for Commercial Tax and perused the material available on record.

It is the contention of the learned Counsel for the petitioner that the petitioner has already paid entire disputed tax and the

appeal is pending before the 2nd respondent and at this juncture, if the relief as to the stay of the proceedings is not entertained and if the recovery of disputed penalty is effected, the very purpose of filing the said appeal, which is a statutory remedy that is available to the aggrieved party, would be defeated.

In the facts and circumstances of the case and in view of submission made by the learned Counsel that the petitioner has already paid entire tax in question and in view of pendency of the appeal, without expressing any opinion on the merits of the case, We feel it a fit case wherein stay can be granted.

Accordingly, there shall be stay of recovery of disputed penalty for the assessment year 2005-2006 till the disposal of the appeal pending before the 2nd respondent. However, the 2nd respondent is directed to dispose of the appeal within a period of three months from the date of receipt of a copy of this order.

Subject to the above direction, the writ petition is disposed of. No order as to costs.

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Justice T. Meena Kumari

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Justice C.V. Nagarjuna Reddy

Date: 20th December, 2007
Nn/Gurc.

HONOURABLE MRS. JUSTICE T.MEENA KUMARI

&

HONOURABLE MR JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No:27426 OF 2007

(Order delivered by the Hon'ble Smt. Justice T. Meena Kumari)

20/12/2007